

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v David Carroll

Docket No. 259698

LC No. 04-007134

Kurtis T. Wilder  
Presiding Judge

Brian K. Zahra

Kirsten Frank Kelly  
Judges

---

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's August 23, 2004 order dismissing the third-degree fleeing and eluding charge against defendant is REVERSED. The trial court based the dismissal on a finding that the police vehicle was inadequately marked. However, generally speaking, such a question is one for the trier of fact. See e.g., *People v Green*, 260 Mich App 710, 720; 680 NW2d 477 (2004). In the instant case, defendant waived his preliminary examination and no evidentiary hearing was conducted on defendant's motion to quash. In the absence of an evidentiary record, the trial court could not properly determine that it would be unreasonable for a juror to find that the vehicle was adequately marked.

The motion to file a late answer is GRANTED.

This matter is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 19 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk